UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UMB BANK, NATIONAL ASSOCIATION, solely in its capacities as Senior Trustee and Security Trustee Plaintiff, vs. AIRPLANES LIMITED and AIRPLANES U.S. TRUST Defendants.	CIVIL ACTION NO.: **(Jury Trial Demanded)**

COMPLAINT

Plaintiff, UMB Bank, National Association ("**UMB Bank**"), in its capacities as: (i) Senior Trustee under that certain indenture dated as of March 28, 1996, by and among Airplanes Limited as issuer of notes ("**Notes**"), Airplanes U.S. Trust ("**U.S. Trust**") as guarantor of the Notes, and Deutsche Bank Trust Company Americas (formerly known as Bankers Trust Company, "**Deutsche Bank**") as initial trustee of the Notes (as supplemented, the "**Indenture**"); and (ii) Security Trustee under that certain Security Trust Agreement dated as of March 28, 1996 (the "**Security Trust Agreement**"), for its complaint against Airplanes Limited and U.S. Trust (together, "**Defendants**"), alleges as follows:

NATURE OF THE ACTION

1. Airplanes Limited, through its subsidiaries, was primarily in the business of acquiring, leasing, and selling aircraft. To finance the acquisition of its subsidiaries' aircraft in 1996, Airplanes Limited issued approximately $3.68 billion of classes and subclasses of Notes, which were guaranteed by its affiliate, U.S. Trust. The Notes corresponded with certificates issued by separate "pass through" trusts to investors, which certificates represent the same economic

investment as the Notes. Since then, Airplanes Limited's subsidiaries have sold all of their aircraft and are no longer operating. Airplanes Limited's noteholders still have not been paid in full. This action arises out of the fact that—for years—Airplanes Limited, at the direction of its directors, Roy M. Dantzic, Joseph E. Francht, Jr., William M, McCann, and Isla M. Smith, has unlawfully misclassified funds, now in excess of $190 million, such that those funds have not been paid to Airplanes Limited's noteholders who are owed hundreds of millions of dollars.

2. Airplanes Limited asserts that the funds are being withheld as a "reserve" (the "**Reserve**") to cover a *hypothetical* liability that it claims its subsidiary, Airplanes Holdings Limited, f/k/a GPA II Limited ("**Airplanes Holdings**"), *might* ultimately incur if Airplanes Holdings loses in ongoing litigation against one of its former lessees, a defunct Brazilian airline called Transbrasil. There is no just reason or contractual right to establish this Reserve. To be certain, as Airplanes Limited concedes, *no liability exists currently*, and none has existed for years, following a favorable 2013 decision in the Transbrasil litigation. Moreover, Airplanes Limited concedes that Transbrasil's claims lack "merit, fairness or rationale." In any event, even if such a liability *did* exist, it would exist solely against Airplanes Limited's hopelessly insolvent subsidiary, Airplanes Holdings (also controlled by McCann and Dantzic, the same individual directors that control Airplanes Limited), *not against Airplanes Limited*.

3. Airplanes Limited's unlawful classification of the Reserve has resulted in valid and mature obligations to its noteholders going unpaid. As cover for its conduct, Airplanes Limited repeatedly has sought to classify the Reserve as one that is somehow afforded priority over its noteholders under the noteholders' own Indenture with Airplanes Limited. Tellingly, over time, Airplanes Limited has shifted its position, reflecting a willingness to classify the Reserve in

whichever way provides a putative basis to withhold the funds (all for the benefit of its subsidiary, Airplanes Holdings). None of those classifications is supported by the Indenture's plain language.

4. In the first instance, for years Airplanes Limited improperly classified the reserve as part of a so-called Maintenance Reserve Amount. The Transbrasil litigation had nothing to do with aircraft maintenance. The Transbrasil litigation—commenced approximately fifteen years ago—stems instead from actions taken by GE Capital Aviation Services Limited ("**GECAS**"), which was Airplanes Limited's aircraft servicer. Specifically, the litigation arose from GECAS's actions in seeking to *collect* on amounts *owed* to Airplanes Holdings and to certain of GECAS's other servicing clients which included GECAS's own affiliates.

5. In May 2016, Airplanes Limited sold the last of its aircraft. Airplanes Limited did not use the proceeds to make principal payments on the Notes. Rather, Airplanes Limited continued to withhold funds. Because the Indenture requires the Maintenance Reserve Amount to be zero once all aircraft have been sold, however, Airplanes Limited had to reclassify the Reserve. From that point on, undeterred and still intent on holding on to the funds at all costs, Airplanes Limited simply re-classified the Reserve as being a "Permitted Accrual" on account of a putative "Expense." For at least three, independent reasons, the Reserve is no more a Permitted Accrual on account of an Expense than it was ever a Maintenance Reserve Amount.

6. *First*, even if the hypothetical Transbrasil litigation liability qualifies as an "Expense" (and it does not), under the plain terms of the Indenture, Airplanes Limited cannot reserve for it ahead of the noteholders unless that hypothetical expense is "anticipated to become due and payable." As Airplanes Limited's own disclosures concede, that is not the case. Back in 2013, the Federal Court of Appeals of Brazil issued an order in the Transbrasil litigation reversing a judgment against Airplanes Holdings, resulting in the cancellation of all orders to pay. That

reversal is consistent with Airplanes Limited's own view that Transbrasil's position is meritless. Nothing is "anticipated to become due and payable."

7. *Second*, any hypothetical Transbrasil litigation liability is not an "Expense" in any event, because—to the extent liability ever arises—it will not be incurred in the course of Airplanes Limited's and its affiliates' permitted business activities under Section 5.02(e) of the Indenture, as is required under the Indenture to qualify as an "Expense." Rather, any such liability will arise from GECAS's conduct which a (now reversed) Brazilian court characterized as "malicious" and "in bad faith." GECAS acted not only for Airplanes Holdings, but also for other, unrelated lessors, including GECAS's own affiliates. To be certain, no liability exists now following a favorable 2013 decision. To the extent GECAS's actions were to once again give rise to liability, however, such actions would fall well outside of the permitted business activities of Airplanes Limited and its subsidiaries.

8. *Third*, the hypothetical litigation liability to Transbrasil is also not an "Expense" under the Indenture because that term is limited to only "fees, costs and expenses incurred" in the course of specified permitted business activities, and does not cover "judgments" rendered or similar litigation liability. Unsurprisingly, the Indenture, in several places, respects the distinction between expenses incurred by service providers, on the one hand, and judgments obtained by adversaries, on the other hand.

9. On top of the foregoing, even if Airplanes Limited were justified in classifying its Reserve on account of an Expense (and it is not), the noteholders are *still* entitled to receive payment from the Reserve for two additional reasons.

10. *One*, any putative obligation that Airplanes Limited may have to fund its subsidiary's (Airplanes Holdings) hypothetical litigation liability would be immediately recouped

against the more than $4 billion of intercompany unsubordinated debt that Airplanes Holdings owes to Airplanes Limited. Airplanes Holdings owes that intercompany debt to Airplanes Limited on account of its receipt from Airplanes Limited of the funds advanced by the issuance of the Notes and Certificates. Indeed, this intercompany note was to function as a primary source of Note repayment, channeling aircraft sale and lease proceeds to noteholders. To be certain, Airplanes Limited not only has manufactured a false contractual basis to pay its subsidiary for a hypothetical litigation judgment (ahead of Airplanes Limited's legitimate creditors), but Airplanes Limited is threatening to do so notwithstanding the fact that its subsidiary owes Airplanes Limited more than $4 billion.

11. *Two*, Airplanes Limited's actions have resulted in multiple (at least three) Events of Default under the Indenture. This is significant because each Event of Default gives rise to an additional reason why any purported Expense would not be funded. The funds subject to the Reserve comprise the noteholders' collateral under the Security Trust Agreement. Upon acceleration of the Notes pursuant to an Event of Default, Plaintiff, in its capacity as Security Trustee, is entitled to exercise its remedies with respect to the Reserve and apply the cash to the principal balance on the Notes. In contrast, neither Airplanes Holdings—the subsidiary which Airplanes Limited seeks to prefer through the establishment of the Reserve—nor Transbrasil—the litigation adversary asserting meritless claims—is a Secured Party, and therefore neither has any interest in such funds. In other words, even assuming *arguendo* Airplanes Limited does have a contractual obligation to reserve for the Transbrasil litigation, it simply cannot do so with Plaintiff's collateral.

12. These are a stunning and unfortunate set of facts. Airplanes Limited has gone to extraordinary lengths to ensure that its insolvent subsidiary's hypothetical litigation liability to

Transbrasil be funded at the expense of Airplanes Limited's legitimate creditors. The Transbrasil action has been pending for fifteen years and it has been nearly three years since there was ever any liability incurred in connection therewith. Since 2012, certain noteholders have sought unsuccessfully to resolve this dispute out of court. During all this time, Airplanes Limited's Reserve has caused required principal payments to noteholders to be wrongfully withheld. Rubbing salt in the wounds of its noteholders, Airplanes Limited has continued to authorize millions of dollars to be paid out as "administrative agent", "cash manager," and director fees, including hundreds of thousands of dollars in such fees in recent months notwithstanding that Defendant has sold all of its aircraft and has no operations. In addition, millions of dollars have been incurred and spent on GECAS's defense of the Transbrasil litigation (and in defense of its own conduct), with more being threatened to be spent notwithstanding the fact that there are no more aircraft or operations.

13. UMB Bank is a trustee without any pecuniary stake in the $190 million that is the subject of this dispute. UMB Bank is currently holding those funds as Security Trustee, and would like to distribute them to legitimate creditors pursuant to the governing documents, but has been precluded from distributing them to the noteholders as a result of Airplanes Limited's unlawful Reserve. So that it may distribute the funds to noteholders owed approximately $382 million, UMB Bank now seeks a declaratory judgment that: (1) any hypothetical Transbrasil liability is not an Expense and the Reserve is not a Permitted Accrual under the Indenture such that the Reserve's funds must be paid on account of the Notes; (2) Events of Default have occurred under the Indenture; (3) as a result of an acceleration declaration, U.S. Trust's guaranty is immediately due and payable; and (4) the Security Trustee is authorized to exercise its remedies. UMB Bank also seeks breach of contract damages for Airplanes Limited's misclassification of the funds that has

caused the wrongful withholding of required payments of principal under the Indenture. In sum and substance, UMB Bank seeks an order authorizing Plaintiff to distribute the $190 million Reserve to the noteholders.

PARTIES

14. Plaintiff UMB Bank is a national banking association with its main office in Kansas City, Missouri. Pursuant to amendments to the respective agreements effective on September 29, 2016, UMB Bank became and is (i) the successor Senior Trustee under the Indenture and (ii) the successor Security Trustee under the Security Trust Agreement.

15. Defendant Airplanes Limited is a limited liability company organized under the laws of Jersey, Channel Islands, where it maintains its principal places of business. Airplanes Limited is the issuer of the Notes.

16. Defendant Airplanes U.S. Trust is a Delaware business trust created under that certain Amended and Restated Airplanes Trust Agreement, dated as of March 11, 1996, with its principal place of business in Delaware. Airplanes U.S. Trust is the guarantor of the Notes.

JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction over this action based on diversity of citizenship under 28 U.S.C. § 1332. The matter in controversy exceeds $75,000.

18. Pursuant to the Indenture, Defendants have submitted to the jurisdiction of the United States federal courts located in the City of New York. Pursuant to the Security Trust Agreement, Defendants have submitted to the jurisdiction of the United States federal court located in New York County.

19. Venue is proper in this district pursuant to 28 U.S.C § 1391. The Indenture and Security Trust Agreement also contain provisions specifying each is to be governed by and construed in accordance with the laws of the State of New York.

FACTS

A. Airplanes Limited's Aircraft Acquisition And Notes Offerings

20. Airplanes Limited, through its direct and indirect subsidiaries, was in the business of leasing and selling aircraft. In or around March 1996, Airplanes Limited indirectly acquired 206 aircraft, related leases and receivables, and intercompany receivables through its acquisition of 95% of the capital stock of Airplanes Holdings from GPA Group plc, and directly acquired intercompany receivables arising from loans it advanced to its subsidiaries.

21. Airplanes Holdings, directly and through its subsidiaries (collectively, including Airplanes Holdings, the "**Aircraft Lessors**"), owned the aircraft and leased them to lessees. As of the filing of this Complaint, the Aircraft Lessors had sold all of their aircraft. They have no ongoing operations.

22. To finance (and later refinance) the acquisition of the aircraft and leasing assets, and the equity ownership in Airplanes Holdings and the other aircraft-owning subsidiaries, Airplanes Limited issued Notes consisting of Class A Notes, including Subclasses A-1 through A-9, and Classes B, C, and D Notes to the pass-through trustees acting on behalf of the pass through trusts (the "**Pass Through Trusts**").

23. The Pass Through Trusts, in turn, issued corresponding classes and sub-classes of certificates (the "**Certificates**") to investors pursuant to a certain supplemented Airplanes Pass Through Trust Agreement, dated as of March 28, 1996 (as amended). Each Certificate represented a fractional undivided beneficial interest in a specific class or subclass of Notes and in another

corresponding class or subclass of notes simultaneously issued by U.S. Trust.[1] The Notes issued by Airplanes Limited are guaranteed by U.S. Trust, and the Notes issued by U.S. Trust are guaranteed by Airplanes Limited. Together, both sets of Notes and their related guarantees held by each trust are the principal sources of payment for the class or subclass of Certificates issued by that trust.

24. Using proceeds from the Notes and Certificates, Airplanes Limited made loans to Airplanes Holdings and other Aircraft Lessors. Those intercompany loans included: (i) a $628 million loan (the "**Holdings Loan**") to Airplanes Holdings pursuant to a Loan Agreement dated March 28, 1996 to fund the purchase by Airplanes Holdings of certain entities; and (ii) a $3.39 billion intercompany loan facility (the "**Intercompany Loan Facility**") entered into on March 28, 1996 by Airplanes Holdings and other Aircraft Lessors as borrowers and Airplanes Limited as lender.

25. The Aircraft Lessors primarily used the lease payments they received from lessees and proceeds from aircraft sales to repay principal and interest to Airplanes Limited on the intercompany loans. Airplanes Limited used those funds to make payments of principal and interest to the holders of the Notes. The Pass Through Trusts, in turn, made payments of interest and principal to the holders of their respective Certificates. In sum, the Notes and Certificates were to be principally paid indirectly from the lease payments and aircraft disposition proceeds received by the Aircraft Lessors.

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[1] U.S. Trust's and its subsidiaries' business is substantially identical to Airplanes Limited's and its subsidiaries. U.S. Trust's issued its notes pursuant to an amended and supplemented indenture that has substantially identical terms to the Indenture. Airplanes Trust's subsidiaries have also sold all their aircraft and are no longer operating.

26. Airplanes Limited has repaid in full or refinanced the principal on Subclass A-1 through A-8 Notes and the corresponding Certificates. The Subclass A-9 Note and corresponding A-9 Certificates remain outstanding, along with the Class B, C, and D Notes and Certificates.

27. Airplanes Limited is hopelessly insolvent. In view of the fact that all of the aircraft have been liquidated and no operations remain, even if the Reserve's funds are properly paid to noteholders, there will not be enough funds to pay the principal on the Subclass A-9 Note in full, and no value will be available for the Class B, C, and D Notes and their corresponding Certificates. Because all of the aircraft have been liquidated and no operations remain, in view of the Holdings Loan and Intercompany Loan Facility owed to Airplanes Limited, Airplanes Holdings is also hopelessly insolvent.

B. The Transbrasil Litigation And Judgment Default

28. Airplanes Limited and Airplanes Holdings retained GECAS as servicer for all of the Aircraft Lessors pursuant to a (since terminated) servicing agreement dated March 28, 1996 (as amended). GECAS's responsibilities as servicer included, among others, negotiating, executing, and collecting rent on aircraft leases, and releasing and selling aircraft.

29. In the 1990s, Airplanes Holdings leased two aircraft to Transbrasil, a now defunct Brazilian airline. GECAS was servicer for those leases. At the same time, certain other entities also leased aircraft to Transbrasil, including: GECAS's affiliate, General Electric Capital Corporation ("**GE Capital**") and two of GE Capital's affiliates (collectively with GE Capital, the "**GE Lessors**"), and AerCap Ireland Limited and AerCap Leasing USA II Inc. (together, the "**AerCap Lessors**" and collectively with the GE Lessors and Airplanes Holdings, the "**Transbrasil Lessors**"). GECAS was servicer for all of the leases (the "**Transbrasil Leases**") entered into between the Transbrasil Lessors and Transbrasil.

30. Transbrasil defaulted under the Transbrasil Leases. GECAS, on behalf of the Transbrasil Lessors, including Airplanes Holdings, restructured the debt owed to them by Transbrasil. Under the restructuring, Transbrasil issued seven promissory notes to the Transbrasil Lessors as guarantees of the payment obligations under the restructured debt. GECAS informed Airplanes Holdings that the promissory note issued to Airplanes Holdings was in the amount of $7,196,700. Airplanes Holdings also held a portion of a $5.3 million promissory note that was held jointly by all of the Transbrasil Lessors. According to Airplanes Limited, Airplanes Holdings' share of that joint note was approximately 42% or approximately $2.23 million. Therefore, in total, Airplanes Holding had less than $10 million at stake.

31. Transbrasil defaulted on the promissory notes in 2000.[2] In 2001, GECAS, purporting to act on behalf of the Transbrasil Lessors, took steps towards initiating a *collection* against Transbrasil. No collection was recovered. Instead, shortly thereafter, Transbrasil sought an injunction and commenced a lawsuit (the "**Transbrasil Action**") against Airplanes Holdings. Therein, Transbrasil sought: (i) a declaration that the promissory notes to the Transbrasil Lessors had already been paid and thus were invalid; and (ii) a penalty against the Transbrasil Lessors in twice the amount of the promissory notes (plus interest and other monetary damages).

32. According to Airplanes Holdings, neither GECAS, nor anyone else, informed it of the Transbrasil Action until nearly ten years after the fact. GECAS defended the Transbrasil Action in Airplanes Holdings' stead.

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2 All Transbrasil litigation awards and other amounts alleged herein are as reported by Airplanes Limited in its periodic reports to noteholders and certificateholders.

33. In July 2001, during the pendency of the Transbrasil Action, GE Capital, sought an involuntary bankruptcy against Transbrasil in its own name. That involuntary bankruptcy was granted on appeal and remains subject to ongoing appeals.

34. On May 3, 2007, a trial court in Sao Paulo, Brazil ruled in favor of Transbrasil in the Transbrasil Action. In February 2010, the Appellate Court of the State of Sao Paulo affirmed the trial court and entered judgment against the Transbrasil Lessors, including Airplanes Holdings (together, the "**Transbrasil Judgment**").

35. The Transbrasil Judgment ordered the Transbrasil Lessors to pay Transbrasil twice the amount of the promissory notes, plus interest and damages suffered by Transbrasil due to GECAS's attempted collection of the promissory notes, including loss of profits and damages Transbrasil suffered as a result of GE Capital's involuntary bankruptcy filing against it.

36. The court concluded that GECAS had acted "malicious[ly]" in seeking to collect upon "already paid debt" and had litigated in "bad faith."

37. Transbrasil's bankruptcy trustee calculated and asserted that the amount of the Transbrasil Judgment arising from GECAS's attempted collection of the promissory notes was $165 million. Transbrasil's former owners calculated and asserted that the amount of the Transbrasil Judgment was $198.5 million.

38. As a result of the Transbrasil Judgment, a lower Brazilian court issued two orders to pay (the "**Orders to Pay**"). Transbrasil asserted that $80 million of the Orders to Pay was directly attributable to Airplanes Holdings' share of certain promissory notes. Moreover, the Orders to Pay directed payment of an additional $59 million attributable to an AerCap Leasing Note, on which Airplanes Limited concedes Airplanes Holdings might be liable if the Transbrasil Judgment is reinstated.

39. On June 8, 2010, GECAS, on behalf of Airplanes Holdings and other Transbrasil Lessors, filed two appeals against the Transbrasil Judgment. In October 2013, the Federal Court of Appeals of Brazil overturned the Transbrasil Judgment in several significant respects (the "**October 2013 Reversal**").

40. The October 2013 Reversal unanimously overturned the order requiring Airplanes Holdings to pay a penalty of twice the amount of the promissory note to Transbrasil. According to Airplanes Limited, therefore, all orders to pay arising out of the Transbrasil Judgment have been cancelled. The October 2013 Reversal also dismissed Transbrasil's indemnity claim for losses related to the involuntary bankruptcy filing. Notably, while the October 2013 Reversal dismissed the conviction for GECAS's "improper presentation of the promissory notes" and "bad faith litigation", it still held that GECAS's collection efforts were "unreasonable."

41. Pursuant to the October 2013 Reversal, on February 4, 2014, a Brazilian court cancelled the Orders to Pay. Presently, the Orders to Pay remain cancelled.

42. Both GECAS and Transbrasil filed various challenges to the October 2013 Reversal. As of the filing of this Complaint, those challenges and several related appeals, challenges, and proceedings are still being resolved through the Brazilian court system.

C. Airplanes Limited's Unlawful Transbrasil Reserve

43. Section 3.08 of the Indenture governs the priority of payments thereunder. It requires Airplanes Limited to apply available funds to make monthly payments to the relevant pass-through trustee (following the 2010 payment in full of the principal of the Subclass A-8 Note and Certificates, the "**A-9 Noteholder**") on account of outstanding principal of the Notes.

Indenture § 3.08(a)(v); § 3.08(b)(ii), attached hereto as Exhibit A (excluding schedules and exhibits).[3]

44. On March 31, 2010, Airplanes Limited publicly-disclosed the Transbrasil Judgment for the first time in its annual report. At this time, the Reserve was non-existent. Airplanes Limited was of the view that the Transbrasil Action "could result in a loss of up to [merely] $15 million plus interest and legal costs." Accordingly, Airplanes Limited made a provision of only $15 million in its financial statements on account of the Transbrasil Judgment to cover any Transbrasil liability that its subsidiary, Airplanes Holdings, might incur. However, no Reserve was established. At that time the outstanding principal balance on the A-8 and A-9 Notes was $75 million and $683 million, respectively.

45. Notwithstanding the establishment of the Transbrasil litigation provision in its financial statements, Airplanes Limited allowed the outstanding principal balance on the A-8 Note to be paid in full on November 15, 2010.

46. The following year, as of March 31, 2011, Airplanes Limited remained of the view that the Transbrasil Action "could result in a loss of up to [merely] $15 million." The outstanding principal balance on the A-9 Note was $627 million.

47. Beginning in July 2012, however, notwithstanding its continued assertion that its subsidiary, Airplanes Holdings, "has strong defenses against the substantive issues raised" in the Transbrasil Action, Airplanes Limited caused payments of principal on the A-9 Note to be suspended in order to divert available cash to establish the Reserve and fund ever increasing Reserve targets.

[3] Any capitalized terms used but not defined herein have the meanings given to them in the Indenture.

48. Specifically, Airplanes Limited caused the cessation of payments of principal on the A-9 Note from July 16, 2012 until January 15, 2013 in order to establish and fund the Reserve until it met its initial target of $110 million to cover Airplanes Holdings' Transbrasil liability, if and when such liability became due. Airplanes Limited initially established the Reserve by increasing the minimum liquidity reserve target from $45 million to $110 million. At the same time—reflecting the unreasonable amount of the Reserve—the Transbrasil litigation provision in Airplanes Limited's March 31, 2012 consolidated financial statements was only increased from $15 million to $19 million with Airplanes Limited explaining in its annual report that anything over $19 million was basically speculative, uncertain, and difficult to quantify.

49. On October 8, 2013, notwithstanding its continued assertion that the Transbrasil Judgment "lacked merit, fairness or rationale," Airplanes Limited determined to increase the Reserve to $140 million, again causing the suspension of the required payments on the A-9 Note on October 15, 2013 until December 15, 2014.

50. Just two weeks later, the October 2013 Reversal was issued. The Orders to Pay were cancelled.

51. The October 2013 Reversal should have caused an elimination of the unlawful Reserve. Nevertheless, Airplanes Limited again caused the suspension of required payments on the A-9 Note and Certificates on November 16, 2015 ***and increased the Reserve to $190 million***. As a result of Airplanes Limited's improper Reserve, scheduled principal payments on the A-9 Note and Certificates have been suspended ever since.

52. Airplanes Limited now maintains the Reserve at $190 million for Airplanes Holdings' hypothetical Transbrasil liability. Meanwhile, in its most recent financial statements,

Airplanes Holdings—the actual defendant in the Transbrasil Action—disclosed it has taken a provision of a mere $3 million for the Transbrasil Action.

53. Certain Certificate holders objected to the Reserve no later than July 2012. Since then, a super-majority of A-9 Certificate holders have attempted to resolve this dispute with Airplanes Limited consensually, but without success. Airplanes Limited has insisted upon maintaining and periodically increasing the Reserve for the benefit of its subsidiary, Airplanes Holdings, causing significant damage to the A-9 Noteholder and corresponding certificateholders.

54. Airplanes Limited has attempted to justify the withholding of principal payments on the A-9 Note by asserting that its obligation to cover its subsidiary's potential liability to Transbrasil ranks ahead of required payments on the A-9 Note under the Indenture. This assertion is baseless.

1. Airplanes Limited's Misclassification Of The Reserve As a "Maintenance" Reserve

55. Prior to May 6, 2016, Airplanes Limited wrongly classified the Reserve as part of the Maintenance Reserve Amount under the Indenture. See Ex. A, Indenture § 1.01, p. 22. Pursuant to the Indenture, the Maintenance Reserve Amount is one of the few items that ranked ahead of the required payments on the A-9 Note. See id., § 3.08(a)(iii).

56. The Maintenance Reserve Amount was intended to cover certain expenses associated with aircraft maintenance. Airplanes Holdings' potential liability to Transbrasil was never an aircraft maintenance expense.

57. In any event, Defendant sold its final aircraft on May 6, 2016. After the sale of all aircraft, the Indenture requires the Maintenance Reserve Amount to be zero in view of the fact that no maintenance is needed once all aircraft are sold. Id. § 1.01 (defining "**Maintenance Reserve Amount**"). That Airplanes Limited, at one point and for as long as it could possibly do so,

classified the Reserve as a Maintenance Reserve Amount reflects the fact that the terms of the governing documents have not been respected here.

2. Airplanes Limited's Misclassification Of The Reserve As A "Permitted Accrual"

58. Because all of the aircraft were sold and Airplanes Limited was no longer able to misuse the Maintenance Reserve Amount classification, Airplanes Limited reclassified the Reserve as a "Permitted Accrual." If it was properly classified as a Permitted Accrual, the Reserve potentially would be part of the Required Expense Amount under the Indenture. See id. § 3.01(d). Under Section 3.08 of the Indenture, the Required Expense Amount has priority over the required payments on the A-9 Note. Id. § 3.08.

59. Airplanes Limited's classification of the Reserve as a Permitted Accrual, however, is improper. Airplanes Limited has no right under the Indenture to maintain the Reserve for its subsidiary's hypothetical liability ahead of the required payments on the A-9 Note.

60. Under the Indenture, the Permitted Accrual is a "balance containing accruals in respect of Expenses that are not regular, monthly recurring Expenses" and that are "anticipated to become due and payable in any future Interest Accrual Period." Id. § 3.01(d).

61. There are at least three, independent reasons why Airplanes Limited's Reserve has violated the Indenture.

62. *First*, even if the hypothetical Transbrasil liability qualified as an Expense (it does not), it still is not a Permitted Accrual under the Indenture. A Permitted Accrual allows for a reserve for certain Expenses that are "anticipated to become due and payable in any future Interest Accrual Period." In light of the October 2013 Reversal, and the cancellations of the Orders to Pay, Airplanes Limited does not and cannot anticipate that the liability will become due and payable at any point in time or in any amount.

63. Indeed, the fact that the Transbrasil Judgment was reversed by the October 2013 Reversal is consistent with Defendant's statements that Transbrasil's claims "lacked merit, fairness or rationale," and that Airplanes Holdings "believes it has strong defenses against the substantive issues raised" by Transbrasil. See 2016 Annual Report, pp. 5, 21, attached hereto as Exhibit B.

64. *Second*, to constitute a Permitted Accrual within the Required Expense Amount, the Reserve must, in the first instance, be for an "Expense." An "Expense" is defined in the Indenture to mean only "any fees, costs or expenses incurred by an Airplanes Group Member in the course of the business activities permitted under Section 5.02(e)" of the Indenture. Ex. A, Indenture § 1.01, p. 16.

65. The hypothetical Transbrasil liability is not an "Expense" under the Indenture because it would not be incurred in the course of a permitted business activity under Section 5.02(e) of the Indenture. Rather, it would arise from a (hypothetical) judgment rendered as a result of improper collection actions by GECAS (on behalf of several Transbrasil Lessors) and by GECAS's affiliate, GE Capital. Those collection actions—characterized by a Brazilian court as "improper" and in "bad faith"—are not permitted business activities of Airplanes Limited or any of its subsidiaries or affiliates as enumerated under Section 5.02(e) of the Indenture.

66. To the extent the Brazilian court misapprehended GECAS's conduct in connection with the Transbrasil Judgment, and the October 2013 Reversal is not itself reversed, then there would be no need for a Reserve in any event. In other words, if GECAS acted permissibly, there is no Expense because there is no judgment. If there is a putative "Expense", it would arise from "improper" collection actions done in "bath faith" which could not give rise to an "Expense" under the Indenture, as this would be outside of the permitted business activities under Section 5.02(e) of the Indenture. Either way, there is no Expense that could justify the Reserve.

67. *Third*, the hypothetical Transbrasil liability resulting from a judgment rendered is not a "fee, cost, or expense incurred" under the Indenture. Both the Indenture and common sense make clear that the fees, costs, and expenses associated with ordinary business operations (*i.e.,* operating and leasing the aircraft) are separate and distinct from any litigation liability. The Class A noteholders agreed to be junior to certain business expenses, not tort (or other litigation) liabilities. In fact, the Indenture makes clear that the Notes are subordinated only to "Expenses payable *to the Service Providers* pursuant to this Indenture and the Relevant Documents." See id. § 10.01(a) (emphasis added). The definition of Service Provider in the Indenture does not include Transbrasil or any other lessee. See id. § 1.01, p. 33. The hypothetical litigation liability to Transbrasil is not an Expense at all, let alone one payable to a Service Provider.

68. Moreover, the Indenture recognizes the distinction between "fees, costs, and expenses incurred" on the one hand, and "judgments rendered" on the other. The definition of Expenses is limited to *only* "fees, costs, and expenses incurred." Therefore, it is impossible to construe the "Expenses" definition to include judgments. Nor is a judgment incurred; rather, a judgment is rendered.

69. The Indenture in defining "Losses" makes clear that a judgment is its own separate category that is different from a cost, expense, or fee, as it separately lists "any loss, **cost**, charge, **expense**, interest, **fee**, payment, demand, liability, claim, action, proceeding, penalty, fine, damages, **judgment**, order or other sanction other than Taxes." Id. § 1.01, p. 22 (emphasis added). If the parties intended judgments to be included as part of the definition of Expenses, they would have separately listed judgments in that definition, as they did for the definition of Losses. In addition, Section 4.01(h) lists as an Event of Default when "any judgment or order for the payment

of money in excess of $100,000,000 shall be rendered." This section both identifies judgments as a distinct category and refers to a judgment as something that is rendered, not incurred.

70. For each of the foregoing reasons, the Reserve for the hypothetical Transbrasil liability fails to qualify as a "Permitted Accrual." Thus, it is not entitled to priority as being part of the Required Expense Amount. Accordingly, the Reserve must be paid to the Class A noteholders in accordance with the terms of the Indenture.

71. For the same reasons described herein, the Reserve for the hypothetical Transbrasil liability fails to qualify as a "Permitted Accrual" under the indenture governing the notes issued by Defendant, U.S. Trust.

3. Airplanes Limited's Hypothetical Liability To Its Subsidiary Airplanes Holdings Is Subject to Recoupment

72. Even if Airplanes Limited's purported obligation to cover Airplanes Holdings' hypothetical liability to Transbrasil were an Expense, the Reserve must still be paid to the Class A noteholders. That is because any such hypothetical intercompany obligation owed by Airplanes Limited to Airplanes Holdings on account of a putative "Expense," would be immediately recouped against the approximately $4 billion Airplanes Holdings owes to Airplanes Limited on account of, among other things, the Holdings Loan and the Intercompany Loan Facility. See Airplanes Holdings Limited & Subsidiaries Directors' Report and Consolidated Financial Statements For Year Ended March 31, 2015 at 24-25, attached hereto as Exhibit C.

73. Because Airplanes Limited's subsidiaries have sold the last of their aircraft, Airplanes Holdings has not, cannot, and will not satisfy its intercompany debt owed to Airplanes Limited. It would be absurd for Airplanes Limited to fund a hypothetical Expense for the benefit of its subsidiary which owes Airplanes Limited approximately $4 billion. That is particularly so

where, as here, the intercompany notes were established in order to serve as a source of funds to repay the Notes.

D. While Causing Principal On the Notes to be Withheld, Airplanes Limited Continues to Accrue and Allow the Payment of Fees and Expenses Even Though No Aircraft Remain and No Operations Exist

74. Notwithstanding the fact that Airplanes Limited's subsidiaries have sold the last of their aircraft, Airplanes Limited continues to incur and cause the payment of a stunning amount of administrative costs, fees, and expenses. For example, in July 2016, Airplanes Limited caused the payment of a monthly "Administrative Agent" fee of nearly $290,000. Airplanes Limited similarly authorized the payment of a monthly "Cash Manager" fee of approximately $110,000.

75. Airplanes Limited should have planned to stop incurring fees and expenses soon after its subsidiaries' aircraft were sold and their operations ceased. Once these events occurred, Airplanes Limited should have promptly wound up its affairs and terminated agreements with certain counterparties. These agreements, including that certain Administrative Agency Agreement and that certain Cash Management Agreement, provide for above-market fees. Instead, Airplanes Limited refused to terminate such agreements and has continued to make excessive payments thereunder, wasting Airplanes Limited's assets. Airplanes Limited should have distributed its only material remaining asset, the Reserve, to the Class A noteholders as partial payment against the outstanding $382 million A-9 Note.

76. The incurrence of such fees and expenses comprise additional damages suffered by the Class A noteholders.

77. In addition to the foregoing, Airplanes Limited's methodology for calculating the Reserve is without any rational basis even assuming it were otherwise appropriate. Airplanes Limited initially converted the Transbrasil Judgment and Orders to Pay from Brazilian Real to U.S. dollars based on an exchange rate of US$1:Brazilian Real $2. Airplanes Limited has refused

to reevaluate its assumed exchange rate even when the exchange rate began to materially favor the U.S. dollar.

E. Several Events of Default Have Occurred

78. The entry of the Transbrasil Judgment against Airplanes Holdings resulted in an Event of Default (the "**Judgment Default**") under Section 4.01 of the Indenture. Section 4.01 provides:

> Events of Default. Each of the following events shall constitute an "Event of Default" hereunder with respect to any class of Notes, and each such Event of Default shall be deemed to exist and continue so long as, but only so long as, it shall not have been remedied . . .
>
> (h) any judgment or order for the payment of money in excess of $100,000,000 shall be rendered against the Issuer, the Guarantor or any Issuer Subsidiary and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of 10 consecutive days during which a stay of enforcement of such judgment or order, by reasons of a pending appeal or otherwise, shall not be in effect; *provided*, *however*, that any such judgment or order shall not be an Event of Default under this Section 4.01(h) if and for so long as (i) the amount of such judgment or order is covered by a valid and binding policy of insurance between the defendant and the insurer covering payment thereof and (ii) such insurer, which shall be rated at least "A" by A.M. Best Company or any similar successor entity, has been notified of, and has not disputed the claim made for payment of, the amount of such judgment or order. . . ."

Ex. A, Indenture § 4.01(h).

79. The Transbrasil Judgment is an Event of Default under section 4.01(h) of the Indenture because: (i) it was entered against Airplanes Holdings for an aggregate amount greater than $100,000,000; (ii) Transbrasil (through its bankruptcy trustee and former owners) has commenced enforcement proceedings upon the judgment; and (iii) there was a period of 10 consecutive days from February 2010 (when the Transbrasil Judgment was entered) through June 8, 2010, when GECAS appealed the Transbrasil Judgment, during which a stay of enforcement of the judgment was not in effect.

80. In light of the establishment of the Reserve, the Judgment Default has not been remedied. Even though the Orders to Pay have been cancelled, Airplanes Limited is maintaining a $190 million reserve on account of the Transbrasil Judgment.

81. Additionally, Airplanes Limited has materially breached Section 5.02(e) of the Indenture as a result of its involvement in the Transbrasil Action through its agent, GECAS. GECAS's conduct was determined to be "improper", "unreasonable," and, at one point, in "bad faith." This conduct, as well as Airplanes Limited's establishment of the related Reserve in a manner that materially adversely affects the holders of Notes, gives rise to a default for engaging in unauthorized business activities (the "**Unauthorized Business Activity Default**").

82. Airplanes Limited's continual misclassification of the Reserve has caused the required payments on the A-9 Note to be wrongfully withheld. That has resulted in a third, additional Event of Default (the "**Payment Default",** and together with the Judgment Default, and the Unauthorized Business Activity Default, the "**Events of Default**"). By establishing the Reserve, which has hindered payments of principal on the A-9 Note, Airplanes Limited has caused an Event of Default to occur under Section 4.01(c) of the Indenture. Section 4.01(c) provides that the following constitutes an "Event of Default":

> (c) failure to pay any amount (other than interest) when due and payable in connection with any note, to the extent that there are, at such time, funds available for such payment in the Collection Account, and the continuance of such default for a period of two Business Days or more. . . .

Ex. A, Indenture § 4.01(c).

83. On June 28, 2016, Plaintiff's predecessor, Deutsche Bank, in its capacity as Senior Trustee, delivered a notice of default declaring Events of Default and accelerating the A-9 Note (the "**June 28 Notice of Default**") under the Indenture in respect of the Judgment Default and the Payment Default.

84. On July 29, 2016, the predecessor Senior Trustee delivered a second notice of default with respect to the Unauthorized Business Activity Default (the "**July 29 Notice of Default**" and with the June 28 Notice of Default, the "**Notices of Default**").

85. The consequence of the Notices of Default is that the all accrued and unpaid interest and all principal outstanding on the A-9 Note became immediately due and payable.

86. Because the A-9 Note was accelerated, U.S. Trust's guaranty of the Note also became immediately due and payable. See Ex. A, Indenture § 12.01.

F. The Reserve Is Collateral Securing The A-9 Note

87. To secure its obligations under the Notes, Airplanes Limited granted to the Security Trustee a security interest in certain collateral (the "**Collateral**") under the Security Trust Agreement. The Collateral includes: (i) all funds received by Airplanes Limited or funds or any other interest held or required by the terms of the Indenture to be held in any Account, (ii) all deposit accounts possessed by the Security Trustee for or on behalf of the Secured Parties, and (iii) all of Airplanes Limited's right, title and interest in and to all deposit accounts and all funds or other interests therein, including any proceeds thereof. See Security Trust Agreement § 2.01(c), (e), attached hereto as Exhibit D.

88. The Secured Parties include the A-9 Noteholder. The Accounts that constitute Collateral include the Expense Account and the Collection Account, in which the Reserve is currently maintained, and any ledger and subledger accounts maintained in either of those accounts. See id. § 2.01(c), (e). Under the Indenture, Plaintiff, as Security Trustee, has dominion and control over those accounts, subject to the order of priorities under Section 3.08.

89. Airplanes Holdings is not a Secured Party. Transbrasil is not a Secured Party. Neither holds any security interest in any of the Accounts, including in the Expense Account or the Collection Account.

90. The Notices of Default, which have accelerated the A-9 Note, have been issued under the Indenture. As a result, the Security Trustee has the right to exercise its remedies with respect to the Collection Account and the Expense Account and any ledger and subledger accounts maintained in either of such Accounts.

CAUSES OF ACTION

COUNT I
(Declaratory Judgment: No Basis to Reserve Under the Indenture)

91. Plaintiff incorporates and realleges each of the foregoing allegations in this Complaint as though fully set forth herein.

92. This claim for relief arises under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201.

93. An actual controversy exists between the parties because Airplanes Limited has unequivocally asserted that the withholding of payment on the A-9 Note is justified on the basis that its subsidiary's hypothetical Transbrasil liability is an Expense and that the Reserve is a Permitted Accrual under the Indenture that has priority over those payments. Plaintiff has unequivocally asserted that the hypothetical Transbrasil liability is not an Expense, the Reserve is not a Permitted Accrual under the Indenture, and that principal payments must be made on account of the A-9 Note.

94. The pendency of this actual controversy is causing harm to the A-9 Noteholder because as a result of Airplanes Limited's misclassification of the Reserve, funds have wrongfully been withheld from the A-9 Noteholder, and are rapidly being depleted at an alarming rate despite Airplanes Limited having no remaining business.

95. Based upon the foregoing, Plaintiff seeks a declaratory judgment that:

i. The hypothetical Transbrasil liability of Airplanes Limited's subsidiary is not an Expense and the Reserve is not a Permitted Accrual under the Indenture;

ii. In any event, Airplanes Limited's hypothetical liability to Airplanes Holdings on account of the Transbrasil litigation is subject to recoupment;

iii. There is no basis under the Indenture to withhold payments on the A-9 Note on account of that hypothetical Transbrasil liability; and

iv. Airplanes Limited has breached the Indenture by misclassifying the hypothetical Transbrasil liability and the Reserve, and the Reserve must be distributed to the Class A noteholders in accordance with the terms of the Indentures.

COUNT II
(Declaratory Judgment: Events of Default)

96. Plaintiff incorporates and realleges each of the foregoing allegations in this Complaint as though fully set forth herein.

97. This claim for relief arises under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201.

98. An actual controversy exists between the parties. Airplanes Limited has unequivocally asserted that there are have been no Events of Default under the Indenture. Plaintiff has unequivocally asserted the occurrence of the Judgment Default, the Payment Default, and the Unauthorized Business Activity Default.

99. The pendency of this actual controversy is causing harm to the A-9 Noteholder because as a result of Airplanes Limited's misclassification of the Reserve, funds have wrongfully been withheld from the A-9 Noteholder, and are rapidly being depleted at an alarming rate despite Airplanes Limited having no remaining business.

100. Based upon the foregoing, Plaintiff seeks a declaratory judgment that:

i. The Judgment Default has occurred under the Indenture;

ii. The Payment Default has occurred under the Indenture;

iii. The Unauthorized Business Activity Default has occurred under the Indenture;

iv. Pursuant to the Notices of Default and declaration of acceleration therein, Plaintiff is entitled, in its capacity as Security Trustee, to exercise remedies against the Reserve;

v. Plaintiff is entitled, in its capacity as Security Trustee, to distribute the Reserve to the Class A noteholders in accordance with the terms of the Indenture; and

vi. U.S. Trust's guaranty of the A-9 Note has become immediately due and payable.

COUNT III
(Breach of Contract)

101. Plaintiff incorporates and realleges each of the foregoing allegations in this Complaint as though fully set forth herein.

102. The Indenture is a valid and enforceable contract. Under the Indenture, available funds must be used to make required principal payments to the A-9 Noteholder on each Payment Date.

103. Plaintiff has performed all of its obligations under the Indenture.

104. Airplanes Limited has materially breached and continues to breach the Indenture by misclassifying the hypothetical Transbrasil Liability and the Reserve such that required principal payments have been improperly withheld from the A-9 Noteholder.

105. As a result of Airplanes Limited's breaches, the A-9 Noteholder has suffered and will continue to suffer monetary damages in an amount to be determined at trial.

106. Airplanes Limited is liable to the A-9 Noteholder for damages, in an amount to be shown at trial, in connection with its breach of the Indenture, including damages sufficient to compensate the A-9 Noteholder for its losses.

JURY TRIAL DEMAND

Plaintiff hereby demands a jury trial for each of the counts alleged.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

A. Issue a declaratory judgment that:

i. Any hypothetical Transbrasil liability is not an Expense, and any reserve for such hypothetical liability is not a Permitted Accrual, under the Indenture;

ii. Airplanes Limited has breached the Indenture and the Reserve must be distributed to the Class A noteholders;

iii. The Judgment Default has occurred under the Indenture;

iv. The Payment Default has occurred under the Indenture;

v. The Unauthorized Business Activity Default has occurred under the Indenture;

vi. Plaintiff is entitled, in its capacity as Security Trustee, to exercise remedies against the Reserve;

vii. Plaintiff is entitled, in its capacity as Security Trustee to distribute the Reserve to the Class A noteholders; and

viii. U.S. Trust's guaranty of the Notes has become immediately due and payable.

B. In the alternative, to the extent a reserve is determined to be appropriate, Plaintiff seeks a declaratory judgment that the amount of the Reserve is unreasonable and must be reduced to an amount the Court deems appropriate;

C. Awarding compensatory damages against Airplanes Limited in an amount to be determined at trial; and

D. Awarding Plaintiff such other and further relief as the Court deems just and proper.

Dated: New York, New York
October 3, 2016

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